

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**LIVEINTENT, INC.**, a Delaware  
Corporation,

Plaintiff,

v.

**RED SPARK, LP**, d/b/a/ HOPE HEALTH  
SUPPLY, a New Jersey Limited Partnership,

Defendant.

Case No.: 1:22-cv-06032

**COMPLAINT**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff LIVEINTENT INC. (“LiveIntent” or “Plaintiff”), brings this action against the above-named Defendant, RED SPARK LP d/b/a HOPE HEALTH SUPPLY (“Red Spark” or “Defendant”), and alleges as follows:

**Nature of the Action**

1. This action seeks damages in connection with Defendant’s breach of a contract between Plaintiff LiveIntent and Defendant Red Spark. In the alternative, LiveIntent is seeking damages against Red Spark for unjust enrichment.

2. Plaintiff and Defendant entered into a binding written LiveIntent Media Services Insertion Order (the “IO”), which incorporates the written IAB Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less Version 3.0 (“Standard Terms”) (collectively addressed as the “Agreement”).

3. Pursuant to the Agreement, LiveIntent was to provide certain online advertising services (the “Services”) for Red Spark and Red Spark was obligated to make full and timely payment for those Services.

4. LiveIntent fully performed and delivered the Services and otherwise fulfilled its obligations under the Agreement.

5. Red Spark failed to meet its payment obligations under the Agreement by wrongfully refusing to pay for the Services.

6. Red Spark is therefore indebted to LiveIntent under the terms of the Agreement in the amount of \$1,416,788.66, exclusive of interest. Accordingly, LiveIntent brings this action to recover damages which it is entitled to as a result of Red Spark's breach of the Agreement and failure to make payment for the value of the Services.

### **Jurisdiction and Venue**

7. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1332. LiveIntent and Red Spark are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. This court has personal jurisdiction over Red Spark. Red Spark transacted and continues to transact substantial business in this District, and Red Spark has the requisite minimum contacts with this District. By conducting continuous and systematic business in this District, Red Spark reasonably should expect its conduct to have consequences in this District. Furthermore, pursuant to the Agreement, Red Spark expressly agreed that "any claims, legal proceedings, or litigation arising in connection with the [Agreement]" "will be brought solely in the State of New York, and the Parties consent to the jurisdiction of such courts."

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). The Agreement giving rise to the instant dispute contains a choice of law provision under which Red Spark expressly agreed that "any claims, legal proceedings, or litigation arising in connection with the

[Agreement]” “will be brought solely in the State of New York, and the Parties consent to the jurisdiction of such courts.”

### **The Parties**

10. LiveIntent is a Delaware corporation with its principal place of business in New York.

11. Red Spark is a limited partnership organized and existing under the laws of New Jersey and maintains an office as its principal place of business in Philadelphia, Pennsylvania.

12. The general and limited partners of Red Spark are citizens of Pennsylvania and/or New Jersey.

13. Thus, complete diversity of citizenship exists between the Parties.

### **Background Allegations**

14. LiveIntent is a media marketing platform, technology, and data company which strives to bridge the gap between major brands and audiences to build relationships. LiveIntent uses an advertising platform that connects brands with online readers through ads served in publisher email newsletters.

15. RedSpark is an internet advertising company which serves as an agent for advertising companies to execute campaigns and increase their company’s sales with potential customers.

16. Since on or about August 24, 2020, LiveIntent and Red Spark entered into various contracts whereby LiveIntent has provided online marketing services to Red Spark and Red Spark has promised to pay for those services (the “Prior Course of Dealing”).

17. Since September 2020, and as part of the Prior Course of Dealing, LiveIntent has sent invoices to Red Spark for its services, and Red Spark has made payment to LiveIntent for LiveIntent's services pursuant to those invoices.

18. On or about December 17, 2021, Red Spark entered into the instant written Agreement with LiveIntent for the Services at issue.

19. Pursuant to Section III of the Standard Terms of the Agreement, LiveIntent was to provide an initial invoice upon completion of the Services.

20. Pursuant to the Agreement, payment for all Services is due 30 days from the LiveIntent invoice.

21. Pursuant to the Agreement, LiveIntent fully performed and delivered the Services and otherwise fulfilled its contractual obligations under the Agreement.

22. On January 31, 2022, LiveIntent timely sent an invoice to Red Spark in the amount of \$1,364,840.48 for payment of its January Services.

23. On February 28, 2022, LiveIntent timely sent an invoice to Red Spark in the amount of \$51,948.18 for payment of its February Services.

24. The amount due to LiveIntent for the outstanding January 2022 and February 2022 invoices totals \$1,416,788.66 (collectively, the "Invoices").

25. Pursuant to the Agreement, Red Spark was required to pay the January 2022 invoice in full by March 2, 2022, and the February 2022 invoice in full by March 30, 2022.

26. LiveIntent did not receive any payments from Red Spark for its January 2022 invoice by March 2, 2022, or its February 2022 invoice by March 30, 2022, as required under the Agreement.

27. On February 23, 2022, LiveIntent contacted Red Spark about the outstanding Invoices; however, Red Spark continued to wrongfully refuse to make the required payments.

28. On May 12, 2022, LiveIntent sent Red Spark a Final Demand for Payment of Outstanding Sum, enclosing the outstanding Invoices and reiterating Red Spark's contractual payment obligations. The letter again demanded payment of the full outstanding sum of \$1,416,788.66 pursuant to the Agreement.

29. As of the date of filing this Complaint, Red Spark has continued to wrongfully refuse to make any payment to satisfy the outstanding Invoices as required under the Agreement, and therefore remains contractually indebted to LiveIntent for the Invoices in the total amount of \$1,416,788.66, not including interest, and LiveIntent has suffered damaged in that amount.

30. All conditions precedent to bringing this action have occurred or been waived.

**COUNT I**  
**Breach of Contract**

31. LiveIntent hereby realleges Paragraphs 1 through 30 as though fully set forth herein.

32. On or about December 17, 2021, LiveIntent and Red Spark entered into a binding and enforceable written contract ("the Agreement") for LiveIntent to deliver certain online advertising services to Red Spark and for Red Spark to make payment to LiveIntent for those Services.

33. LiveIntent has performed all its Services and obligations under the Agreement.

34. Pursuant to the "Payment Terms" Section of the Agreement, Red Spark agreed to pay any outstanding fees to LiveIntent within 30 days of invoice. LiveIntent sent two invoices under the Agreement to Red Spark dated January 31, 2022, and February 28, 2022, respectively.

35. Red Spark breached the Agreement by failing to pay the January 31, 2022, and February 28, 2022 Invoices by their due dates of March 2, 2022 and March 30, 2022, respectively.

36. LiveIntent repeatedly sent Red Spark communications regarding Red Spark's obligations to pay LiveIntent the outstanding debt in the total amount of \$1,416,788.66. At the time of filing this Complaint, LiveIntent is owed at least \$1,416,788.66, exclusive of interest.

37. Red Spark's failure to pay the amount owed under the Agreement in a timely manner as set forth herein has resulted in significant fees and costs to LiveIntent and has caused LiveIntent to suffer financial loss and damages in that it has not yet been compensated for its time and Services.

38. As a direct and proximate result of Red Spark's breach of the Agreement, and by its actions described herein, Red Spark has damaged LiveIntent in an amount equal to \$1,416,788.66, in principal, plus attorney fees, costs, and interest.

**WHEREFORE**, LiveIntent respectfully requests that this Court:

- A. Enter judgment that Red Spark LP breached the Agreement;
- B. Award LiveIntent damages in the total amount of at least \$1,416,788.66;
- C. Award LiveIntent's attorney fees and other costs associated with its efforts to investigate, identify, and enforce Red Spark's violation of the Agreement;
- D. Award LiveIntent all pre- and post-judgment interest provided by law; and
- E. Order such other and further relief the Court deems just and proper.

**COUNT II**  
**Unjust Enrichment**

39. LiveIntent hereby realleges Paragraphs 1 through 30 as though fully set forth herein.

40. LiveIntent pleads this claim for unjust enrichment in the alternative to Count I for breach of contract.

41. Red Spark requested and directed that LiveIntent perform the Services.

42. LiveIntent timely performed and delivered all the Services.

43. In order to deliver the Services, LiveIntent expended significant time and resources.

44. Performance and delivery of the Services by LiveIntent directly benefitted and enriched Red Spark at the expense of LiveIntent.

45. Red Spark was enriched by LiveIntent's delivery of the Services.

46. Red Spark has retained the value of LiveIntent's Services. However, LiveIntent has not been compensated for its Services.

47. Despite LiveIntent's repeated requests, Red Spark wrongfully refuses to pay LiveIntent for its Services.

48. It is therefore against equity and good conscience to permit Red Spark to retain the value of LiveIntent's Services without compensation from Red Spark.

**WHEREFORE**, LiveIntent respectfully requests that this Court:

- A. Enter judgment that Red Spark LP has been unjustly enriched by its retention of the value of LiveIntent's Services;
- B. Award LiveIntent damages for the value of its Services, in the total amount of at least \$1,416,788.66;

- C. Award LiveIntent's attorney fees and other costs associated with its efforts to be justly compensated for the value of its Services;
- D. Award LiveIntent all pre- and post-judgment interest provided by law; and
- E. Order such other and further relief the Court deems just and proper.

**Demand for Jury Trial**

Plaintiff LiveIntent hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Dated: July 14, 2022

Respectfully submitted,

JAYARAM LAW, INC.

By: /s/ Vivek Jayaram

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